



February 2, 2016

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Kawailoa Solar, LLC
c/o Mr. Wren Wescoatt
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Honolulu, HI 96813
Email: WWescoatt@sunedison.com

Ms. Jennifer Lootens
44 Montgomery Street, Suite 2200
San Francisco, CA 94104
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PUBLIC UTILITIES
COMMISSION

SunEdison, Inc.
179 Lincoln Street, Suite 500
Boston, MA 02111
Facsimile: (808) 441-4604

**RE: Kawailoa Solar, LLC – Notice of Failure to Complete Substantial Commitment
Milestone – Docket No. 2014-0356**

Dear Mr. Wescoatt and Ms. Lootens:

This letter serves as official notice that Kawailoa Solar, LLC, ("Seller") has failed to meet a Substantial Commitment Milestone as required under that certain Amended and Restated Power Purchase Agreement For Renewable As-Available Energy between Hawaiian Electric Company, Inc. ("Hawaiian Electric" or "Company") and Seller dated May 29, 2015 ("PPA") and that such failure results in an immediate right to Company to terminate the PPA.

Pursuant to Attachment K of the PPA, the following milestone is both a Guaranteed Project Milestone and Substantial Commitment Milestone:

February 1, 2016	Provide Company with documentation reasonably satisfactory to Company evidencing (i) the closing on financing for the Facility or (ii) the financial capability to construct the Facility ("Construction Financing Closing Milestone").*
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Seller failed to provide any information evidencing the completion of this Substantial Commitment Milestones by February 1, 2016. Section 13.4(C) of the PPA provides in part:

13.4(C) Termination and Termination Damages for Failure to Achieve a Guaranteed Substantial Commitment Date. If Seller has not achieved a Substantial Commitment Milestone by the applicable Guaranteed Substantial Commitment Date, as extended by any grace period that may be applicable under Section [1]3.3 (Guaranteed Project Milestone Dates), Company shall have the right, notwithstanding any other provision of this Agreement to the contrary, to terminate this Agreement with immediate effect by issuing

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a written termination notice to Seller designating the Day such termination is to be effective.

...
If the Agreement is terminated by Company pursuant to this Section 13.4 (Damages and Termination), Company shall have the right to collect liquidated damages ("Termination Damages"), which shall be calculated in accordance with Article 16 (Damages in the Event of Termination By Company) of this Agreement.

Section 16.1 reads:

16.1 Termination Due to Failure to Meet a Guaranteed Project Milestone Date. If the Agreement is terminated by Company pursuant to Section 13.4 (Damages and Termination), Company shall be entitled to Termination Damages calculated by multiplying the Contract Capacity by \$50/kW, less the total amount of Daily Delay Damages actually paid by Seller to Company under Section 13.4 (Damages and Termination).

Seller's failure to meet the Substantial Commitment Milestone leaves the Company with serious concerns regarding Seller's ability to complete the project in a timely and acceptable manner. Hawaiian Electric is currently reviewing its rights and potential remedies under the PPA, including the right to terminate the PPA and collect Termination Damages as set forth above. In order to make this decision, Hawaiian Electric must consider and evaluate the course of action which is in the best interest of our customers and has the responsibility and obligation to seek relevant information on behalf of our customers to determine the status of the project and Seller's future ability to perform. It is imperative that the Company deliver the intended benefits of the project to our customers in a timely manner and meet the state's renewable portfolio standards of reaching 100% renewable energy, including considering other renewable energy projects if Seller is unable to perform its obligations under the PPA.

Thank you for your prompt attention to this matter.¹ If Company elects to terminate the PPA, notice of such decision will be made in accordance with the PPA.

Sincerely,



Shelee M. T. Kimura
Vice President, Corporate Planning &
Business Development

¹ Hawaiian Electric has provided a copy of this letter to the Commission and the Consumer Advocate to advise them of the status of this missed payment and Event of Default. See In re Approval of Power Purchase Contract with Honua Power, LLC, Docket No. 2010-0010, Decision & Order No. 31044, filed February 27, 2013 (noting that Hawaiian Electric must ensure that its Power Purchase Agreements with developers are on track and should provide timely notification of the contrary to the Commission and Consumer Advocate).

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**cc: State of Hawai'i Public Utilities Commission
Consumer Advocate of the State of Hawai'i
Rodney Chong - Hawaiian Electric
Dmitri Jarocki - Hawaiian Electric
Reese Yorimoto - Hawaiian Electric
Corinne Chang - Hawaiian Electric
Stewart Chong - Hawaiian Electric
Rebecca Dayhuff Matsushima - Hawaiian Electric**